

Family Finance Corp., 395 U.S. 337 (1969) (garnishment). In voiding these statutes, the Supreme Court necessarily found that they sufficiently involved state action so as to require due process protections.

However, it is far from settled that all creditor's remedies involve state action. For example, it has been held that the mere authorization of procedure by legislation did not supply the State action element. Flagg Brothers, Inc. v. Brooks, 436 U.S. 149, 157-166 (1978) (warehouseman's lien). Moreover, it has been said that essentially private actions do not become State action merely because State officials perform ministerial functions, such as recordation. See Parks v. "Mr. Ford", 556 F.2d 132, 141 (3rd Cir. 1977). This issue should be resolved in the next few weeks by the Supreme Court in the case of Lugar v. Edmondson Oil Company, Inc., 639 F.2d 1058 (4th Cir. 1981), cert. granted, 101 S.Ct. 3078 (1981) (No. 80-1730) (argued, Dec. 8, 1981).

Assuming that there is State action, the principles of the Court of Appeals' decision in Barry Properties would suggest the unconstitutionality of Senate Bill 473.

In Barry Properties, the Court of Appeals concluded that the mechanic's lien constituted a significant taking of property interest sufficient to invoke the due process requirement. Under the statute a "subsisting lien" arose as soon as materials were supplied or work performed and constituted a "cloud on the property owner's title" such that "not only will [it] be extremely difficult" for the owner to legally alienate or further encumber the property, but additionally, his equity will be diminished to the extent of the lien." 277 Md. at 23-24.

The Court then examined the mechanic's lien law which did not require a general contractor to give notice to the property owner of the establishment of the lien prior to its filing with a court but did require a subcontractor to inform the owner in writing of his intention to claim a lien. In holding such a procedure to be defective, the Court said:

"[N]otice of intent to claim a lien, which is the only 'notice' the owner is required to receive prior to being made aware of a suit to enforce the claim, is not, in our judgment, adequate. The filing of a claim to a lien, although recorded, also does not give the property owner constructive notice of the lien ... There is no provision requiring any hearing concerning the lien prior to the filing of a suit to enforce it. The statute is the same with respect to